



[7590-01-P]

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50-309, 72-30; NRC-2012-0137]

License No. DPR-36

**In the Matter of
Maine Yankee Atomic Power Company**

Maine Yankee Atomic Power Station

**Confirmatory Order Modifying License
(Effective Immediately)**

AGENCY: Nuclear Regulatory Commission.

ACTION: The U.S. Nuclear Regulatory Commission (NRC or the Commission) issued a Confirmatory Order to Maine Yankee Atomic Power Company (Maine Yankee or the Licensee), to address statutory requirements and the Commission's regulation regarding foreign ownership, control, or domination (FOCD).

FOR FURTHER INFORMATION CONTACT: John Goshen, Project Manager, Division of Spent Fuel Storage and Transportation, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555. Telephone: (301) 492-3325; Fax number: (301) 492-3342; E-mail: john.goshen@nrc.gov.

I.

Maine Yankee Atomic Power Company (Maine Yankee or the Licensee), is the holder of Facility Operating License No. DPR-36, pursuant to 10 CFR Part 50, which authorizes the receipt, possession, and use of byproduct and special nuclear material in accordance with the Commission's regulations in 10 CFR Parts 30, 40, and 70 at the Maine Yankee Atomic Power Station and storage of spent nuclear fuel under the general license provisions of 10 CFR Part 72, Subpart K at the Maine Yankee Atomic Power Station. The facility is located at the Licensee's site in Wiscasset, Maine.

II.

On December 21, 2011, as supplemented April 24, 2012, Maine Yankee submitted a letter to the U.S. Nuclear Regulatory Commission (NRC or the Commission) (Agencywide Documents Access and Management System (ADAMS) Accession Nos. ML11364A053 and ML12125A042), stating that it had implemented a Negation Action Plan by adopting a Board of Directors Resolution that prevents any potential for foreign control over safety and security matters, including access to security information and to special nuclear material in compliance with Section 103d of the Atomic Energy Act of 1954, as amended (AEA) and the Commission's regulation under Title 10 of the *Code of Federal Regulations* (10 CFR) 50.38. The Board of Directors Resolution was passed on December 14, 2011. The Board of Directors Resolution was enclosed in a Foreign Ownership, Control, and Influence (FOCI) application filed with the NRC on January 3, 2012, and also provided in a letter to the NRC dated February 23, 2012 (ADAMS Accession No. ML12066A040).

The Negation Action Plan, as modified in the April 24, 2012 letter, contains provisions related to foreign ownership, control, or domination that include, but are not limited to, the following items: (1) Access to classified and safeguards information and to special nuclear material shall be controlled by Maine Yankee under the direction of the Chief Nuclear Officer (CNO) of Maine Yankee; (2) Decisions related to safety and security of special nuclear material, and related to access to classified and safeguards information and to special nuclear material, are specifically delegated by the Maine Yankee Board of Directors to the CNO of Maine Yankee; (3) The CNO of Maine Yankee shall be a U.S. citizen and shall execute a certification acknowledging his or her special duties to protect classified and safeguards information, to protect public health and safety and common defense and security relative to special nuclear material, and to report any foreign ownership, control, or domination issue to the NRC; (4) Directors and officers of foreign-controlled sponsor companies shall not have access to safeguards or classified information, and shall not have access to special nuclear material in the

possession of Maine Yankee; (5) Directors and officers of Maine Yankee who are representatives of a foreign-controlled owner shall be excluded from access to classified information and to special nuclear material; and (6) Directors and officers of Maine Yankee who are representatives of a foreign-controlled owner shall execute certifications acknowledging their exclusion from access to classified information and special nuclear material, and acknowledging their commitment to take no action to circumvent the protective measures established by Maine Yankee to negate any foreign control or influence with respect to radiological safety and security of special nuclear material.

The NRC has reviewed and evaluated the executed Negation Action Plan and Board Resolution submitted by Maine Yankee, and finds the plan and implementing actions are acceptable to negate the foreign ownership, control, or domination issues and satisfy NRC requirements as applicable when the plan was submitted and at this time.

III.

In order to meet the statutory requirements of Section 103d of the AEA and 10 CFR 50.38 as discussed above, the Commission has determined that the Facility Operating License for Maine Yankee Atomic Power Station must be modified to include provisions with respect to the measures identified in Section II of this Confirmatory Order. The requirements needed to effectuate the foregoing are set forth in Section IV below. On May 31, 2012, Maine Yankee consented to the license modifications set forth in Section IV below. Maine Yankee further agreed in its letter dated May 31, 2012, that it has waived its right to a hearing on this Confirmatory Order, and, therefore, that the terms of the Confirmatory Order are effective upon issuance.

The NRC has concluded that the License modifications set forth in Section IV are acceptable and necessary to ensure continued compliance with the AEA. Based on the above and Maine Yankee's consent, this Confirmatory Order is immediately effective upon issuance.

IV.

Accordingly, pursuant to Section 103d of the Atomic Energy Act of 1954, as amended, and the Commission's regulations in 10 CFR 2.202, 10 CFR Part 50, and 10 CFR Part 72, IT IS HEREBY ORDERED, EFFECTIVE IMMEDIATELY, THAT LICENSE NO. DPR-36 IS MODIFIED AS FOLLOWS:

- 1.) The Maine Yankee Atomic Power Negation Action Plan included with the letters dated December 21, 2011, and April 24, 2012, and the Board Resolution included with the FOCl application filed on January 3, 2012, and provided in a letter to the NRC dated February 23, 2012, shall be adhered to and may not be modified in any respect concerning decision-making authority over the Maine Yankee Independent Spent Fuel Storage Installation without the prior written consent of the Director, Office of Nuclear Material Safety and Safeguards, or designee.
- 2.) Access to classified and safeguards information and to special nuclear material shall be controlled by Maine Yankee Atomic Power Company under the direction of the CNO of Maine Yankee Atomic Power Company.
- 3.) Decisions related to safety and security of special nuclear material, and related to access to classified and safeguards information and to special nuclear material, are specifically delegated by the Maine Yankee Atomic Power Company Board of Directors to the CNO of Maine Yankee Atomic Power Company.
- 4.) The CNO of Maine Yankee Atomic Power Company shall be a U.S. citizen and shall execute a certification acknowledging his or her special duties to protect

classified and safeguards information, to protect public health and safety and common defense and security relative to special nuclear material, and to report any foreign ownership, control, or domination issue to the NRC.

- 5.) Directors and Officers of any foreign controlled owner shall not be permitted to hold positions, and shall be excluded from holding positions, at Maine Yankee Atomic Power Company that would enable them to control the policy and practices of Maine Yankee Atomic Power Company in the performance of its licensed activities, and shall not have access to classified information or safeguards information related to the Maine Yankee facility, or access to or custody of special nuclear material related to the Maine Yankee facility.
- 6.) Maine Yankee Atomic Power Company shall cause to be transmitted to the Director, Office of Nuclear Material Safety and Safeguards, within 30 days of knowledge of a filing with the U.S. Securities and Exchange Commission, any Schedules 13D or 13G filed pursuant to the Securities and Exchange Act of 1934 that disclose beneficial ownership of any registered classes of Maine Yankee Atomic Power Company stock.

V.

In accordance with 10 CFR 2.202, any person adversely affected by this Confirmatory Order, other than the Licensee, may request a hearing within 20 days of the date of this Order. Where good cause is shown, consideration will be given to extending the time to request a hearing. A request for extension of time must be made in writing to the Director, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, and include a statement of good cause for the extension.

If a person other than the Licensee requests a hearing, that person shall set forth with particularity the manner in which his interest is adversely affected by this Order and shall address the applicable criteria set forth in 10 CFR 2.202 and 2.309.

If a hearing is granted, the Commission will issue an Order designating the time and place of any hearings. If a hearing is held, the issue to be considered at such hearing shall be whether this Order should be sustained.

All documents filed in NRC adjudicatory proceedings, including a request for hearing, a petition for leave to intervene, any motion or other document filed in the proceeding prior to the submission of a request for hearing or petition to intervene, and documents filed by interested governmental entities participating under 10 CFR 2.315(c), must be filed in accordance with the NRC E-Filing rule (72 FR 49139, August 28, 2007). The E-Filing process requires participants to submit and serve all adjudicatory documents over the internet, or in some cases to mail copies on electronic storage media. Participants may not submit paper copies of their filings unless they seek an exemption in accordance with the procedures described below.

To comply with the procedural requirements of E-Filing, at least 10 days prior to the filing deadline, the participant should contact the Office of the Secretary by e-mail at hearing.docket@nrc.gov, or by telephone at (301) 415-1677, to request (1) a digital ID certificate, which allows the participant (or its counsel or representative) to digitally sign documents and access the E-Submittal server for any proceeding in which it is participating; and (2) advise the Secretary that the participant will be submitting a request or petition for hearing (even in instances in which the participant, or its counsel or representative, already holds an NRC-issued digital ID certificate). Based upon this information, the Secretary will establish an electronic docket for the hearing in this proceeding if the Secretary has not already established an electronic docket.

Information about applying for a digital ID certificate is available on NRC's public Web site at <http://www.nrc.gov/site-help/e-submittals/apply-certificates.html>. System requirements for

accessing the E-Submittal server are detailed in NRC's "Guidance for Electronic Submission," which is available on the agency's public Web site at <http://www.nrc.gov/site-help/e-submittals.html>. Participants may attempt to use other software not listed on the web site, but should note that the NRC's E-Filing system does not support unlisted software, and the NRC Meta System Help Desk will not be able to offer assistance in using unlisted software.

If a participant is electronically submitting a document to the NRC in accordance with the E-Filing rule, the participant must file the document using the NRC's online, web-based submission form. In order to serve documents through the Electronic Information Exchange, users will be required to install a web browser plug-in from the NRC web site. Further information on the web-based submission form, including the installation of the Web browser plug-in, is available on the NRC's public Web site at <http://www.nrc.gov/site-help/e-submittals.html>.

Once a participant has obtained a digital ID certificate and a docket has been created, the participant can then submit a request for hearing or petition for leave to intervene. Submissions should be in Portable Document Format (PDF) in accordance with NRC guidance available on the NRC public Web site at <http://www.nrc.gov/site-help/e-submittals.html>. A filing is considered complete at the time the documents are submitted through the NRC's E-Filing system. To be timely, an electronic filing must be submitted to the E-Filing system no later than 11:59 p.m. Eastern Time on the due date. Upon receipt of a transmission, the E-Filing system time-stamps the document and sends the submitter an e-mail notice confirming receipt of the document. The E-Filing system also distributes an e-mail notice that provides access to the document to the NRC Office of the General Counsel and any others who have advised the Office of the Secretary that they wish to participate in the proceeding, so that the filer need not serve the documents on those participants separately. Therefore, applicants and other participants (or their counsel or representative) must apply for and receive a digital ID certificate

before a hearing request/petition to intervene is filed so that they can obtain access to the document via the E-Filing system.

A person filing electronically using the agency's adjudicatory E-Filing system may seek assistance by contacting the NRC Meta System Help Desk through the "Contact Us" link located on the NRC Web site at <http://www.nrc.gov/site-help/e-submittals.html>, by e-mail at MSHD.Resource@nrc.gov, or by a toll-free call at (866) 672-7640. The NRC Meta System Help Desk is available between 8 a.m. and 8 p.m., Eastern Time, Monday through Friday, excluding government holidays.

Participants who believe that they have a good cause for not submitting documents electronically must file an exemption request, in accordance with 10 CFR 2.302(g), with their initial paper filing requesting authorization to continue to submit documents in paper format. Such filings must be submitted by: (1) first-class mail addressed to the Office of the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, Attention: Rulemaking and Adjudications Staff; or (2) courier, express mail, or expedited delivery service to the Office of the Secretary, Sixteenth Floor, One White Flint North, 11555 Rockville Pike, Rockville, Maryland, 20852, Attention: Rulemaking and Adjudications Staff. Participants filing a document in this manner are responsible for serving the document on all other participants. Filing is considered complete by first-class mail as of the time of deposit in the mail, or by courier, express mail, or expedited delivery service upon depositing the document with the provider of the service. A presiding officer, having granted an exemption request from using E-Filing, may require a participant or party to use E-Filing if the presiding officer subsequently determines that the reason for granting the exemption from use of E-Filing no longer exists.

Documents submitted in adjudicatory proceedings will appear in NRC's electronic hearing docket, which is available to the public at <http://ehd1.nrc.gov/ehd/>, unless excluded pursuant to an order of the Commission, or the presiding officer. Participants are requested not to include personal privacy information, such as social security numbers, home addresses, or

home phone numbers in their filings, unless an NRC regulation or other law requires submission of such information. With respect to copyrighted works, except for limited excerpts that serve the purpose of the adjudicatory filings and would constitute a Fair Use application, participants are requested not to include copyrighted materials in their submission.

A REQUEST FOR HEARING SHALL NOT STAY THE IMMEDIATE EFFECTIVENESS
OF THIS ORDER.

FOR THE NUCLEAR REGULATORY COMMISSION

/RA/

Catherine Haney, Director
Office of Nuclear Material Safety
and Safeguards

Dated this 4th day of June 2012.

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